

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4557

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

COREY WENDELL COX,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:10-cr-00274-WO-1)

Submitted: January 9, 2012

Decided: January 13, 2012

Before DUNCAN, DAVIS, and FLOYD, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Stacey D. Rubain, QUANDER & RUBAIN, P.A., Winston-Salem, North Carolina, for Appellant. Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Corey Wendell Cox appeals the 240-month sentence imposed after he pled guilty to conspiracy to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 841, 846 (2006). On appeal, Cox asserts error only in the determination of his sentence. Because Cox does not assert error with regard to his conviction, we affirm the conviction.

The parties have filed a joint motion to remand for resentencing in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). Upon review of the joint motion and the appellate record, we find the parties' position to be well taken. Accordingly, we vacate Cox's sentence and grant the motion to remand for resentencing.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED